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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,184	07/23/2003	Eugenio Sergio Longo	D-43481-01	8237

7590

04/26/2005

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EXAMINER

RAYFORD, SANDRA M

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 04/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/625,184

Applicant(s)

LONGO ET AL.

Examiner

Sandra M. Nolan-Rayford

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims

1. Pursuant to entry of the amendments in the 21 January 2004 response ('the last response') in reply to the 17 September 2004 office action ("the last office action"), claims 1-20 are pending.

Objections/Rejections Withdrawn

2. All objections and rejections set forth in sections 4 through 9 of the last office action are withdrawn in view of the amendments and arguments presented in the last response.

New Rejections

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wirth (US 5,171,640).

Wirth was supplied in applicants' IDS of 23 July 2003.

Wirth teaches multilayer materials containing ethylene/vinyl alcohol copolymer (a) and styrene-based polymer layers (b) in a b/a/c structure (see claim 7 at col. 6). The materials exemplified includes ones in which the (b) layer is 69 to 79% of the total material (see col. 3, Table I), based upon the thickness of the (b) layers and the sum of the thicknesses of all layers. The materials have barrier properties (title).

Wirth fails to recite the weight ratios of (b) to (a) polymers recited in applicants' claims.

It would have been obvious to one having ordinary skill in the art at the time of the invention to employ suitable amounts of polymers in the materials of the Wirth patent in order to achieve optimal barrier properties.

In the absence of convincing objective evidence to the contrary, the weight ratios of (b) to (a) polymers would be expected to be the same as applicants'.

It is deemed desirable to make multilayer materials having barrier properties for use in packaging.

In the absence of convincing objective evidence to the contrary, the selection of suitable styrene-based copolymers for use in the Wirth materials is deemed a matter of engineering choice, depending upon the properties desired in the final material.

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6. Claims 5-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wirth as applied to claims 1-4 above, and further in view of Gusavage et al (EPO-07079554A1).

Wirth is discussed above. It fails to teach the foamed polystyrene trays of the claimed packages.

Gusavage shows materials with sealant/barrier/bonding layers bound to foamed polystyrene trays in packages (page 2, lines 51-52 and page 18, claim 6). It teaches, at page 6, lines 15-27 that styrene/butadiene copolymer layers are sealable to polystyrene foams.

The references are analogous because they both deal with multilayer materials having barrier properties.

It would have been obvious to one having ordinary skill in the art at the time of the invention to cover the trays of Gusavage with the materials of Wirth in order to package goods so that gasses cannot penetrate the packaging.

The motivation to cover the trays of Gusavage with the materials of Wirth is found in Wirth's title, where it says its materials have barrier properties.

It is deemed desirable to make packaging having barrier properties to improve the storage stability of the goods housed in the packaging.

Response to Arguments

7. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.


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Conclusion

Any inquiry concerning this communication should be addressed to Sandra M. Nolan-Rayford, at telephone number 571/272-1495. She can be reached Monday through Thursday, from 6:30 am to 4:00 pm, ET.

If attempts to reach the examiner are unsuccessful, contact her supervisor, Harold Pyon, at 571/272-1498.

The fax number for patent application documents is 703/872-9306.


S. M. Nolan-Rayford
Primary Examiner
Technology Center 1700

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